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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/053,383	01/17/2002	Michael T. Merk	24637-5	3156
21130	7590	01/12/2005	EXAMINER	
BENESCH, FRIEDLANDER, COPLAN & ARONOFF LLP ATTN: IP DEPARTMENT DOCKET CLERK 2300 BP TOWER 200 PUBLIC SQUARE CLEVELAND, OH 44114			PHAN, THANH S	
			ART UNIT	PAPER NUMBER
			2841	

DATE MAILED: 01/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/053,383	Applicant(s) MERK ET AL.	
	Examiner Thanh S Phan	Art Unit 2841	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 October 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION*****Claim Rejections - 35 USC § 112***

Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are: the applicant does not include language that suggests how or where the image is being display; and how or where the image and the information display is relative to the base portion. The examiner does not know if they are in a portion different from the base portion or they are on the base portion. Further it is unclear if an image or an image display is being claimed.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7, 9-15 rejected under 35 U.S.C. 103(a) as being unpatentable over Chang [Des. 421,722] in view of Bar-Yona [US 6,226,906] and Bushch et al. [US 4,081,952].

Regarding claims 1-7, 9 - 15, Chang discloses an apparatus [figures 1-7] comprising: a top portion [substantially vertical rectangular portion] including a clock [not explicitly labeled] displaying information; and a shaped based portion [substantially

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elliptical portion] having a length less than a height of the apparatus [figure 3]; where the shaped base portion supports the image and the information display in a substantially vertical orientation, the shaped base portion permitting the image and the information display to oscillate upon external urging [rocking motion].

Chang discloses the claimed invention except for an image displaying area in conjunction with the clock and wherein the base portion comprises less than half of a total weight of the apparatus.

Bar-Yona disclose a display unit [figures 8-9] comprising a housing [4] having a top portion and a base portion, wherein the top portion housed an image displaying area [2] having lenticular lenses image display unit [8, 10] displaying at least two changeable images; an information display [clock 62] and a power supply mounted in the base of the device [figure 5].

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to incorporate the display unit and clock design of Bar-Yona with the apparatus of Chang for the purpose of displaying multiple messages in conjunction with telling time.

The examiner takes official notice that it is known to use a variety of material in constructing the housing of a clock, and one such widely used material is plastic (as discloses in Bushch et al. [US 4,081,952], which is being cited for referencing purpose). If the housing of Chang is made of plastic, which is substantially light, then the upper portion of Chang's rocking clock is heavier than the base portion due to the added

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weight of the conventional clock mounted on the top; therefore it has more than 50% of the total weight of the device is on the top portion.

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to have the housing made of plastic to form a durable & lightweight clock device, because plastic is commonly used for this purpose.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chang and Bar-Yona and Bushch et al. as applied to claim 7 above, and further in view of Kutosky [US 5,995,455].

Chang and Bar-Yona disclose the claimed invention except for the clock is one of an alarm settable to sound at a determined time and immediately upon user interaction.

Kutosky teaches an alarm timer device [figure 3] comprising an alarm on/off switch [80].

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to incorporate the alarm function of Kutosky with Chang, as modified, for the purpose of facilitating alarm at a preset time.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-15 been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Busch et al. [US 4,081,952].

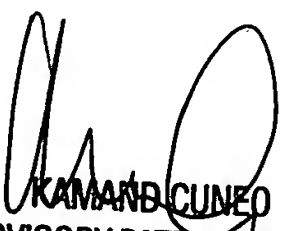
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thanh S Phan whose telephone number is 571-272-2109. The examiner can normally be reached on M-F 9:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kamand Cuneo can be reached on 571-272-1957. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

tsp

  
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